

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

RESIDENTS' ADVISORY COUNCIL;
ANNA HONEYCUTT, on behalf of
herself and all others simi-
larly situated in Section 23
housing; CARRIE GRAVES, LUTI-
TIA HALL, HATTIE HART, JANIE
DOUGLAS, and BETTY PATTERSON,
on behalf of themselves and
all others similarly situated
in conventional family housing
projects,

Plaintiffs,

v.

HOUSING AUTHORITY OF THE CITY
OF CHARLOTTE, NORTH CAROLINA;
RAY H. WHEELING, Executive
Director; and E. PAT HALL, JOHN
E. CHAPMAN, JR., JAMES RICHARD-
SON, W. THOMAS RAY, MRS. WILLIE
T. HART, M. W. PETERSON, and
JAMES R. BRYANT, JR., each in
his or her capacity as Commis-
sioner of the Housing Authority
of the City of Charlotte, North
Carolina,

Defendants.

CIVIL ACTION NO. CC-76-106

9/19/77

SETTLEMENT AGREEMENT

The parties hereto, for themselves and their successors in office and on behalf of all others similarly situated as members of the class or classes represented by plaintiffs as hereinafter described, agree that this case shall be compromised and settled in accordance with the terms and conditions of this Settlement Agreement, subject to the approval of the Court as provided for herein.

I.

Preliminary Statement

A. Nature of Case. Six tenants and the Residents' Advisory Council (comprised of representatives of project resident organizations) ("plaintiffs") instituted this suit against the Housing Authority of the City of Charlotte, N. C. ("Housing Authority") and its Executive Director and Commissioners (in their official capacities) ("defendants") to compel adjustments in utility allowances, being (1) the quantity

of energy units furnished by the Housing Authority without additional charge to the tenant, in projects where the Housing Authority furnishes utilities and surcharges for "excess" consumption; and (2) the dollar allowance granted by the Housing Authority as a credit against rent, in projects where the tenant purchases utilities from the utility company.

B. Jurisdiction. Plaintiffs assert primary and pendent jurisdiction based on allegations of civil rights violations and on the alleged existence of Federal questions plus the requisite dollar amounts in controversy.

C. Class Action. Plaintiffs purport to represent all present and future tenants of the Housing Authority affected by the Authority's schedules of quantity and dollar allowances for utilities.

D. Plaintiffs' Legal Theory. Plaintiffs principally rely on the Brooke Amendment to the United States Housing Act of 1937, adopted by Congress in 1969, which limited permissible rents, in public housing projects assisted by HUD, to 25% of family income (with "rents" and "income" to be defined by HUD) (42 U.S.C. §1437(a)). In defining "rents", HUD variously refers to the inclusion of "reasonable amounts of utilities". Plaintiffs contend, in essence, that the Housing Authority has failed to furnish, without charge, "reasonable amounts of utilities" or to allow a credit against rent for purchasing directly "reasonable amounts of utilities".

E. Defendants' Legal Defenses. Defendants principally assert, on the merits, that the Housing Authority has furnished "reasonable amounts of utilities". In determining reasonableness, defendants deem applicable the Housing Authority's own solvency and funding capacity, the limited essential uses for which the Authority purports to supply utilities and the mandate of State law regarding operating budgets. Defendants have asserted additional defenses relating to lack of jurisdiction, waiver, statutes of limitation and absence of class action prerequisites.

F. Discovery. The parties have engaged in extensive

discovery, including the collection and display of utility consumption histories for Housing Authority projects.

G. Nature of Settlement. The compromise and settlement to which the parties have agreed, subject to the concurrence of the Court, provides essentially for (1) the establishment of utility allowances based upon an agreed formula, (2) annual adjustments of such allowances based upon current data and the agreed formula, and (3) a minimum effective period of two years.

II.

Definitions

As used herein, the following terms shall have the meanings specified:

A. "Allowance" means:

(1) the units or quantities of Utilities furnished without Surcharge to a tenant, where such Utilities are purchased by the Housing Authority and a tenant's consumption thereof is Checkmetered by the Housing Authority; or

(2) the dollar amounts that are credited against a tenant's gross rents on account of Utilities, where such Utilities are purchased by the tenant from the public utility company.

B. "Checkmeter" means a device for measuring Utility consumption within an individual dwelling unit, where the Utility is purchased by the Housing Authority and a Surcharge is imposed for consumption in excess of the Allowance.

C. "Effective Date" means January 1, 1977, or the regular January 1977 Checkmeter reading dates for each Project, whichever is later.

D. "Surcharge" means the charge to a tenant for consumption of Utilities in excess of an Allowance, where such Utilities are purchased by the Housing Authority and the tenant's consumption thereof is Checkmetered by the Housing Authority.

E. "Utilities" or "Utility" means electricity and natural gas, or one of them as the case may be.

III.

Allowances

As soon as practicable, but in any event within 30 days after approval of this Settlement by the Court, the Housing Authority shall adopt resolutions establishing separate Allowances for each bedroom size dwelling in each of its projects for consumption of Utilities after the Effective Date hereof, as follows:

A. Conventional Projects. For each of its conventional projects identified in Attachment A hereto, the Allowances for each month shall be equal to 120% of the average actual usage (stated in kilowatt-hours of electricity and cubic feet of natural gas) for each such month during the years 1974 through 1976, determined in accordance with Article V below.

Because tenants of Southside Homes (NC 3-3) and Belvedere Homes (NC 3-4) purchase their electricity from the public utility company, their electricity Allowances will be established in the manner prescribed for establishing Allowances for tenants of leased housing projects pursuant to paragraph IIIB below.

B. Leased Projects. For each of its leased projects identified in Attachment B hereto, the Allowances for each month shall be equal to 120% of the average actual monthly cost of Utilities purchased by the tenants of each such project during the years 1975 and 1976. An alternative Allowance schedule shall be established for tenants of leased projects who, despite a reasonable effort to do so, are unable to qualify with the public utility for an Equal Payment Plan based on a budgeted level monthly payment. The alternative Allowances for each month shall be equal to 120% of the average actual cost of Utilities purchased by the tenants of each such project during each such month of 1975 and 1976, meaning that the Allowance would not be a level dollar amount monthly, but would vary from month to month as in the case of the conventional projects.

The dollar Allowance will be applied as a credit against monthly gross rent, and any excess credit shall be ac-

cumulated for application against the tenant's future rent or other charges. Any unused credit shall be paid to the tenant in cash annually or at the expiration or termination of the tenant's lease.

IV.

Annual Adjustments

During January 1978, the Authority shall compute the actual utility usages for the year just ended, in the same manner as provided in Article V below, and shall promptly establish new Allowances, for the projects covered by this Agreement, using the same formula used in establishing the 1977 Allowances, except that average actual usages for the next preceding three years only shall be used.

V.

Statistics

In establishing the Allowances, the Housing Authority shall compute average usages by using all available consumption records for all dwelling units for 1974 and for all or a random sample of dwelling units for 1975 and each subsequent year. The random sample shall utilize information from all dwelling units of a particular size in a particular project where the number of such units is less than 25 and from at least 25 dwelling units or one-third of all dwelling units, whichever is greater, of a particular size in a particular project where the number of such units is 25 or more.

In computing Allowances for tenants who purchase their Utilities from the public utility company, the Housing Authority will need billing data from the public utility companies. Accordingly, tenants will be asked to authorize the public utility companies to release the required consumption and billing information to the Housing Authority. The authorization will be given on a form to be furnished by the Housing Authority, either at or after the time of leasing.

Notwithstanding the foregoing, the Housing Authority may initially establish the Allowances for electricity at Southside

Homes (NC 3-3) and Belvedere Homes (NC 3-4) based on statistics collected for electricity usage at Piedmont Courts (NC 3-1) and Fairview Homes (NC 3-2). When the Housing Authority obtains from the public utility company the actual consumption data for Southside Homes and Belvedere Homes, that information shall be used prospectively in the establishment of new Allowances for those projects.

VI.

Meter Readings and Records

The Authority shall establish a regular monthly Checkmeter reading date for each project and shall read each Checkmeter in a project within 7 days before and 7 days after that date each month. The Authority shall develop a reasonably improved form for recording and preserving the Checkmeter readings. At least one copy of readings, as recorded by the meter reader, would be maintained for all projects in the Housing Authority's central office. Any Checkmeter reading indicating monthly Surcharge in excess of \$20.00, or indicating 0 consumption since the prior month, would be routinely referred for rereading.

VII.

Elderly Exemption

Because Housing Authority experience has indicated that its elderly families are generally not major users of Utilities and because, for that same reason, the Housing Authority, with the advice and consent of HUD, has not installed Checkmeters in its elderly projects, the Housing Authority agrees to create a uniform exemption classification that will afford all of its elderly tenants (as defined in its regulations) equal treatment regardless of project assignment. Where the Housing Authority purchases the Utilities and then Checkmeters the tenant's consumption, the Allowance schedule shall provide that no Surcharge shall be imposed upon the elderly tenant regardless of consumption, unless a standard level Surcharge is imposed upon all elderly tenants in the Housing Authority's project for use of a particular nonessential major appliance

such as a freezer or air-conditioner. Where the tenants purchase the Utilities from the public utility company, the Allowance schedule shall provide for an annual review and reconciliation of the tenant's actual usage for the year, and, in the unlikely event that the elderly tenant's actual Utilities cost for the year exceeded the annual dollar Allowance, the tenant shall receive either an equivalent credit against ensuing rent or a cash rebate.

VIII.

Surcharges

The Housing Authority shall from time to time establish schedules of Surcharges for consumption of Checkmetered Utilities in excess of Allowances. The Surcharges shall be specified dollar amounts for designated units of excess consumption sufficient only to permit the Housing Authority to recover the prorated cost of the Utilities. Surcharge rates may fluctuate from period to period and project to project to reflect fluctuations and variations in the Housing Authority's cost of Utilities. Surcharge rates may be rounded up to the next whole number to avoid unit rates containing fractions of a cent and to reflect the fact that the Housing Authority incurs costs, in addition to its Utility costs, in determining, billing and collecting Surcharges. The Surcharge rates may also be stated in specified blocks of excess consumption, such as \$2.00 per 100 kwh or fraction thereof, so long as such blocks are reasonably small.

IX.

Effective Period

The Allowances established under Article III above shall apply to all billings for Utilities consumption for the first 12 months following the Effective Date. The Allowances for consumption for the second 12 months following the Effective Date shall be subject to the adjustments provided for in Article IV above.

The Elderly Exemption provided for in Article VII above shall apply to all billings for Utilities consumption for a

period beginning no later than the Effective Date and ending no earlier than the second anniversary of the Effective Date.

During the two-year period referred to above, the Housing Authority's Allowances and Elderly Exemption for the projects described in Attachments A and B shall be established in accordance with this Agreement, notwithstanding the promulgation of any inconsistent recommendations, guidelines, or regulations by HUD, whether more or less favorable to tenants or any class of tenants.

For any consumption period after the second anniversary of the Effective Date, the Housing Authority may establish such Allowances, and Exemptions as may then be appropriate and lawful; provided, however, the Housing Authority agrees to give reasonable notice and opportunity for comment to any affected tenants with respect to the Housing Authority's intent to consider and act upon any revision of any one or more of the schedules of Allowances adopted in accordance with this Agreement or any modification or discontinuance of the Elderly Exemption. As part of the compromise and settlement hereby made, the parties agree that absent the issuance by HUD of any specific regulations to the contrary after the date hereof, the Housing Authority may, without limitation, comply with the foregoing requirement for the establishment of appropriate and lawful Allowances, applicable at least to the period between the second and fourth anniversaries of the Effective Date, by establishing Allowances using 100%, in lieu of 120%, in the formulae provided for herein.

X.

Class Action

Based solely on the facts and claims to be settled and compromised in this action, and only for the purpose of this action and the compromise and settlement thereof, defendants admit that this action may appropriately be maintained as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. Defendants, therefore, withdraw their objection to plaintiffs' motion for certification of a class composed of all present and future tenants (for the term of

this Agreement) and admit, for that limited purpose, the allegations of the complaint necessary to support that certification.

Plaintiffs shall, as soon as practicable, give such notice of this proposed compromise and settlement as the Court may deem appropriate pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. The parties hereto believe that such notice may effectively and adequately be given by the posting of notices in individual project offices and project buildings and by making available to tenants at the Housing Authority's project offices a reasonable number of copies of the notices and this Agreement. The Settlement Agreement has previously been considered by members of the Residents' Advisory Council in consultation with their attorneys.

XI.

Approvals

As evidenced by the signatures hereon, this Agreement has been approved by the plaintiffs and defendants and their attorneys and by HUD, as required by HUD regulations and its loan agreements with the Housing Authority with respect to settlement of litigation and matters of general budgetary oversight. The approvals are contingent, however, upon the entry of an order by the Court, within a reasonable time, approving the maintenance of this action as a class action and approving the disposition of this action as provided for herein. The parties agree to take no action to impede or frustrate the approval and consummation of this compromise and settlement.

Anything herein to the contrary notwithstanding, the compromise and settlement contemplated by this Agreement shall not be consummated and shall be void unless approved by the Court within a reasonable time after execution on behalf of the parties hereto. The compromise and settlement shall be consummated upon the approval of the Court and upon entry of an appropriate order to that effect which certifies the class and declares the rights of the class, with respect

to the subject matter of this action, to be those declared or created by this Settlement Agreement.

XII.

Claims Resolved

The consummation of this Settlement Agreement shall constitute a complete settlement of the claims asserted in the complaint in this action and a complete discharge of the defendants' obligations with respect thereto as to all members of the class represented by plaintiffs, except as follows. Neither this Settlement Agreement nor the order of the Court evidencing approval thereof shall settle or dispose of any of the following claims which shall be pursued, if at all, by the aggrieved tenant, individually and not as a member of a class, in separate proceedings in an appropriate forum (including, where appropriate, the Housing Authority's grievance procedure):

- (a) any Utilities claim based on the Housing Authority's failure to utilize an accurate Checkmeter, to read and record the Checkmeter accurately, to repair electrical defects after notice of the need therefor, or to make any other repair or improvement required by a tenant's lease or by law which results in the consumption of greater quantities of Utilities than the average dwelling unit of the same size in the same project; and
- (b) any claim unrelated to the adequacy of Allowances, and requiring no adjustment with respect thereto, based on the failure of the Housing Authority to make any repair or improvement required by a tenant's lease or by law.

Delinquent Accounts

During the pendency of this action and the forbearance of the Housing Authority with respect to delinquent Surcharge accounts, many such delinquent accounts arose. Upon the approval of this settlement by the Court, the Housing Authority shall permit tenants to pay amounts accrued prior to the Effective Date in 12 level monthly instalments commencing on the first day of the month following such Court approval and continuing on the first day of each month thereafter until the arrearages shall have been paid in full.

This the _____ day of May, 1977.


 Theodore Fillette

Attorney for Plaintiffs

LEGAL AID SOCIETY OF MECKLENBURG
 COUNTY
 403 North Tryon Street
 Charlotte, North Carolina 28202
 704/376-1608

Robert C. Sink

Attorney for Defendants

FLEMING, ROBINSON & BRADSHAW, P. A.
 2500 Jefferson First Union Plaza
 Charlotte, North Carolina 28282
 704/377-2536

AGREED:

RESIDENTS' ADVISORY COUNCIL

HOUSING AUTHORITY OF THE CITY
OF CHARLOTTE, N. C.

By _____

By _____

Anna Honeycutt
ANNA HONEYCUTT

RAY H. WHEELING, Executive
Director

Carrie Graves
CARRIE GRAVES

E. PAT HALL, Chairman

Lutitia Hall
LUTITIA HALL

JOHN E. CHAPMAN, JR.,
Commissioner

Hattie Hart (W. Thomas)
HATTIE HART

JAMES F. RICHARDSON,
Commissioner

Janie M. Douglas
JANIE DOUGLAS

W. THOMAS RAY,
Commissioner

Betty Patterson
BETTY PATTERSON

WILLIE T. HART,
Commissioner

M. W. PETERSON,
Commissioner

JAMES R. BRYANT, JR.,
Commissioner

APPROVED AND CONSENTED TO:

UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT

By _____

ATTACHMENT A

Conventional Projects

| | |
|-----------------|-----------|
| Piedmont Courts | (NC 3-1) |
| Fairview Homes | (NC 3-2) |
| Southside Homes | (NC 3-3) |
| Belvedere Homes | (NC 3-4) |
| Earle Village | (NC 3-5) |
| Dalton Village | (NC 3-9) |
| Boulevard Homes | (NC 3-11) |
| Dillehay Courts | (NC 3-12) |

ATTACHMENT B

Leased Projects

Keyway Apartments

Pitts Drive Apartments

Coronet Way Apartments

Marvin Road Apartments

Tryon Hills Apartments